

NO.: NNH-CV-14-6050848-S

ZHAOYIN WANG, Plaintiff,	:	SUPERIOR COURT
	:	
v.	:	J.D. OF NEW HAVEN
	:	AT NEW HAVEN
BETA PHARMA, INC., DON ZHANG AND ZHEJIANG BETA PHARMA CO., LTD., Defendants.	:	NOVEMBER 18, 2016

**SUBMISSION STATEMENT FOR DOCUMENTS FILED UNDER SEAL AND IN SUPPORT OF MOTION TO DISQUALIFY OPPOSING COUNSEL**

Defendants Beta Pharma, Inc. ("BP") and Don Zhang ("Zhang") (together, "Defendants") hereby file this Submission Statement explaining the significance of documents being filed under seal (the "Documents") and in support of the pending Motion to Disqualify ("MDQ") Jonathan Katz, Esq. ("Katz") from representing plaintiff Zhaoyin Wang ("Plaintiff") in this case. [D.E. #183.00]. On October 24, 2016, the Court granted [D.E. #186.20] Defendants' Motion for Protective Order [D.E. #186.00] and thereby entered a Protective Order [D.E. #199.00], which permits the filing, under seal, of attorney-client privileged and work product information in connection with the MDQ without waiving any privilege or protection. The Documents are being filed pursuant to that Protective Order and the Court's October 24, 2016 Order.<sup>1</sup>

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<sup>1</sup> The Protective Order does not limit what documents may be disclosed under the Order, provided they satisfy its definitions of Confidential or Attorneys' Eyes Only. While Defendants' Motion for Protective Order identified nine documents to be designated under the Order, Defendants have designated four additional attorney-client privileged and/or work product documents [Zhang Supp. Aff., Exh. 5-8]. Defendants raised this issue with Plaintiff's counsel, and Plaintiff has no objection to these

## PRELIMINARY STATEMENT

The Documents demonstrate that Lance Liu, Esq. ("Liu"), Defendants' former attorney and Director of Legal Affairs, counseled them on the same matter as this case. Liu advised Defendants on the very agreement at issue in this breach of contract case (the "2010 Agreement"), and even redrafted the Agreement. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Because Liu counseled Defendants on these issues, Defendants never expected that Liu would assist a lawyer in suing them on the 2010 Agreement. Unfortunately, they were wrong. As explained in the MDQ, Liu teamed up with Katz to sue Defendants based on alleged breaches of the 2010 Agreement. Because Liu counseled Defendants on the same matter as this action, and then teamed up with Katz, Katz must be disqualified from representing Plaintiff in this case.

## LEGAL ARGUMENT

- I. **While Serving as Defendants' Lawyer, Liu Advised Defendants on the Matters at Issue in this Action**
  - A. **The 2010 Agreement at Issue in this Action**

Plaintiff alleges that, in March 2010, he entered into an Agreement, which had two components:

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documents being filed (In connection with another disqualification motion in a pending federal case, these additional documents were previously filed under seal, and pursuant to a protective order analogous to the Protective Order in this case).

- First, he would become BP's Chief Scientific Officer in exchange for a salary and a portion of BP's stock in ZJBP. Complaint, First Count, ¶ 10.
- Second, Plaintiff contends that the Agreement contemplated the establishment of Beta Pharma Canada ("BPC"), a Canadian corporation in which Plaintiff would own 51% of the stock and Zhang would own 49%. Id. at ¶ 11.

Allegedly, BP and Zhang breached the 2010 Agreement by, inter alia, failing to pay Plaintiff his salary and ZJBP stock, and by discontinuing funding of BPC. Id. at ¶ 12; Complaint, Second Count, ¶ 15.

**B. Liu Counsels Defendants<sup>2</sup> on Revising and Dissolving the 2010 Agreement**

During his representation of Defendants, Liu counseled them on revising and dissolving the purported 2010 Agreement at issue in this case.

[REDACTED]

[REDACTED] Specifically, on July 28, 2012, Plaintiff sent Dr. Jirong Peng, Ph.D., BP's Vice-President, an email attaching a draft "Shareholder's Agreement." Zhang Aff.<sup>3</sup>, Exh. 4. That "Agreement" constituted a revision of the 2010 Agreement, as it delineated Zhang's and Plaintiff's purported obligations and ownership interests in BPC. Id. Peng forwarded Plaintiff's email and the revised Agreement to Zhang, who then forwarded Plaintiff's email and the attached agreement to Liu on July 30, 2012. [REDACTED]

[REDACTED]

[REDACTED]

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<sup>2</sup> Liu never represented Zhang in his individual capacity, but instead counseled Zhang as the President of BP.

<sup>3</sup> This affidavit was attached to the MDQ [D.E. #185] as Exhibit A.



all of our previous agreement [sic].” Zhang Aff., Exh. 5 (emphasis added). The next day, Zhang sent Plaintiff an email, stating,

Very fortunately, we have Dr. Lance Liu take care of our legal affairs . . . So at this point, please feel free to pass our agreements to him and also explain your problems, concerning and so on to him. The bottom line is to comply with IRS regulations and clearly resolve our past and sign a new agreement as you requested.

Id. Zhang copied Liu on that email. Id. The same day (July 31, 2012), after speaking with Plaintiff, Liu sent Plaintiff an email asking for a copy of his purported Agreement with Zhang. Kolpen Aff.<sup>4</sup>, Exh. 2.

[REDACTED]

Liu's legal services on the 2010 Agreement were not limited to revising it; rather, Liu also counseled Defendants on dissolving the agreement altogether.<sup>5</sup> Plaintiff testified<sup>6</sup> that, in 2012, he sent the 2010 Agreement to Liu, at Zhang's direction, because Zhang wanted to dissolve the Agreement. Kolpen Aff., Exh. 3, 68:3-6. In

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<sup>4</sup> This affidavit was attached to the MDQ [D.E. 185] as Exhibit B.

<sup>5</sup> Also, in September 2012, Liu provided legal advice to BP in connection with BPC and associated tax issues. Zhang Aff., at ¶ 16; Zhang Supp. Aff., Exh. 4.

<sup>6</sup> Defendants deposed Wang in Beta Pharma, Inc., et al. v. Liu, Docket No. L-2040-14 (Superior Court of New Jersey, Law Division) (the “Liu Action”), an action in which Defendants are suing Liu for engaging in attorney misconduct.

sum, Liu counseled BP on dissolving and revising 2010 Agreement – which is the very Agreement on which Wang bases this lawsuit.

[REDACTED]

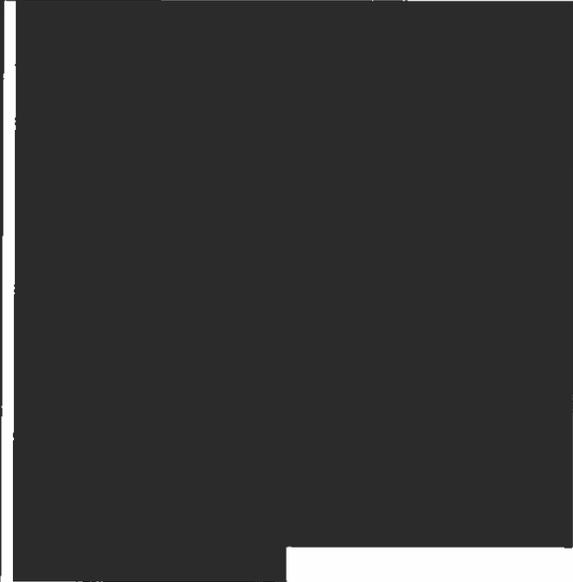
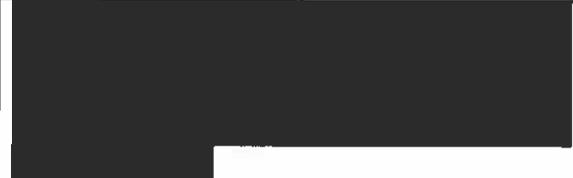
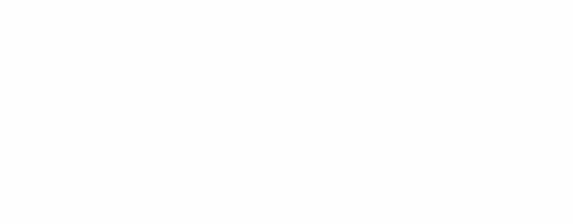
[REDACTED]

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7 [REDACTED]

8 [REDACTED]



	<p>"Defendant BP breached the Partnership Agreement in one or more of the following respects: by <u>failing to pay plaintiff his salary</u>; by <u>discontinuing funding for BPC</u>; by <u>failing to deliver promised shares of BP to plaintiff</u>; by <u>failing to register the shares of ZBP in plaintiff's name on the records of ZBP in China so he could participate in the planned initial public offering of ZBP shares in China</u>; and by failing to cause plaintiff to participate in the anticipated ZBP public offering in China." Complaint, First Count, ¶ 12 (emphasis added).</p>
	<p>BP knew or should have known that it "would not or could not cause plaintiffs' share ownership to be registered on the official records of ZBP." Complaint, Third Count, ¶ 12(b); <u>see also</u> Complaint, First Count, ¶ 12.</p>
	<p>BP knew or should have known that "plaintiff's shares of ZBP were not transferrable or saleable to others." Complaint, Third Count, ¶ 12(f).</p>
	<p>BP knew or should have known that, "unless Beta Pharma repurchased plaintiff's shares, there was no way for plaintiff to realize the cash value of his stockholding in ZBP." Complaint, Third Count, ¶ 12(g).</p>
	<p>BP did not disclose facts about its alleged noncompliance with securities laws "regulating their ability to sell unregistered securities." Complaint, Third Count, ¶ 13(i); <u>see also</u> Complaint, Fourth Count, ¶ 13(i).</p>

Liu repeatedly counseled BP on the issues in this case. He provided advice on revising and dissolving the 2010 Agreement, which is the very Agreement at issue in

this breach of contract action. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Liu

provided extensive legal advice to BP on the 2010 Agreement, then switched teams and assisted Katz in suing BP based on that Agreement.<sup>9</sup>

### CONCLUSION

The Documents submitted herewith further demonstrate that Liu counseled Defendants on the same matter as this case before teaming up with Katz to sue them in this case. For the reasons set forth herein and in Defendants' MDQ, Defendants respectfully move that the Court grant their Motion and order the following relief:

1. Disqualification of Katz from representing Plaintiff in this case; and
2. An injunction precluding Katz from turning over his file(s) associated with this matter to any other lawyer or law firm.

DEFENDANTS BETA PHARMA, INC. AND  
DON ZHANG,

By:  /s/  
Michael G. Caldwell (juris no. 421880)

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<sup>9</sup> This case is analogous to a lawyer counseling a mortgagor on, and drafting, a potential loan modification after the mortgagor allegedly defaults on a loan, and then switching teams and representing the lender in a foreclosure action against the mortgagor. The lawyer is barred from representing the lender because the proposed modification concerns the same matter as the alleged default at issue in the foreclosure case.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by email this 18<sup>th</sup> day of November, 2016.

Jonathan Katz, Esq.  
Jacobs & Dow, LLC  
350 Orange Street  
New Haven, CT 06511  
jkatz@jacobsllaw.com

/s/  
Michael G. Caldwell (juris no. 421880)

# **EXHIBIT A**



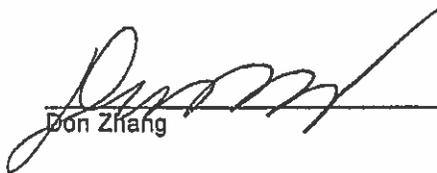
7. Attached hereto as Exhibit 4 are true and correct copies of five emails from September 2012 concerning various tax issues, involving me, Liu, Zhaoyin Wang, Jirong Peng (Beta Pharma's Vice President), and Beta Pharma's accountants.

8. Attached hereto as Exhibit 5 is a true and correct copy of a chain of emails (including attached Stock Agreement) from December 21-22, 2011, amongst Amy Chen, Beta Pharma's former manager of legal affairs, Liu, and me.

9. Attached hereto as Exhibit 6 is a true and correct copy of Liu's time entry for legal services on December 22, 2011 (irrelevant information redacted from invoice).

10. Attached hereto as Exhibit 7 is a true and correct copy of an email chain (and the attached Stock Agreements) dated January 6, 2012 involving me, Amy Chen, and Liu.

11. Attached hereto as Exhibit 8 is a true and correct copy of Liu's time entry for legal services on January 6, 2012 (irrelevant information redacted from invoice).

  
Don Zhang

STATE OF NEW JERSEY    )  
  )  
  )     ss.: November 11, 2016  
COUNTY OF MERCER     )

Before me personally appeared Don Zhang, signer of the foregoing instrument, and he acknowledged the same to be his free act and deed, for the purposes contained herein.

  
Notary Public  
My commission expires \_\_\_\_\_

BARBARA LAWRENCE  
Notary Public  
State of New Jersey  
My Commission Expires Aug 21, 2017

# **EXHIBIT 1**

REDACTED

# **EXHIBIT 2**

REDACTED

# **EXHIBIT 3**

REDACTED

# **EXHIBIT 4**

REDACTED

# **EXHIBIT 5**

REDACTED

# EXHIBIT 6

REDACTED

# **EXHIBIT 7**

REDACTED

# **EXHIBIT 8**

REDACTED